

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

PHILLIP SEUFFERT,

Plaintiff,

v.

**9:13-CV-1303
(FJS/DEP)**

**K. PECORE, Correction Officer, Coxsackie Correctional
Facility, also known as C. Pecore; and M. DONOVAN,
Correction Officer, Coxsackie Correctional Facility,**

Defendants.

APPEARANCES

OF COUNSEL

PHILLIP SEUFFERT

10-A-3656

Clinton Correctional Facility

P. O. Box 2001

Dannemore, New York 12929

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendants

LAURA SPRAGUE, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court is Magistrate Judge Peebles' July 30, 2014 Report and Recommendation, in which he recommended that this Court grant Defendants' motion for summary judgment as it relates to Plaintiff's excessive force cause of action against Defendant Pecore, without prejudice, and dismiss Defendant Pecore from this action and deny Defendants' motion to the extent it seeks dismissal of Plaintiff's discrimination claim against Defendant Donovan, without prejudice. *See* Dkt. No. 12 at 24. The parties did not file any objections to these recommendations.

When a party does not object to a magistrate judge's Report and Recommendation, the court reviews that Report and Recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Peebles' July 30, 2014 Report and Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Peebles' July 30, 2014 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendants' motion for summary judgment is **GRANTED** as it relates to Plaintiff's excessive force cause of action against Defendant Pecore, without prejudice, for failure to fully exhaust administrative remedies and that Defendant Pecore is dismissed from the action; and the Court further

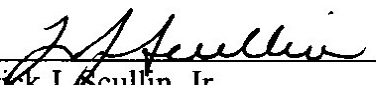
ORDERS that Defendants' motion for summary judgment is **DENIED** to the extent it seeks dismissal of Plaintiff's discrimination claim against Defendant Donovan without prejudice to renewal following the close of discovery; and the Court further

ORDERS, that this case is referred to Magistrate Judge Peebles for all further pretrial matters; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: August 26, 2014
Syracuse, New York


Frederick J. Scullin, Jr.
Senior United States District Court Judge